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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,503	10/19/2001	Stephen W. Boyd	HRT-0281	8002
27777	7590	06/20/2005	EXAMINER	
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			ISABELLA, DAVID J	
			ART UNIT	PAPER NUMBER
			3738	

DATE MAILED: 06/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/982,503

Applicant(s)

BOYD ET AL.

Examiner

DAVID J. ISABELLA

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 106-108, 121-129, 182 and 183 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 106-108, 121-129, 182 and 183 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 102***

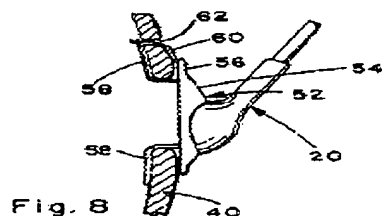
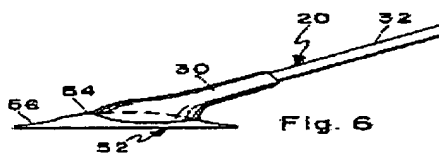
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 106 and 107 are rejected under 35 U.S.C. 102(b) as being anticipated by Phillips, et al (4047532).

Phillips, et al discloses a surgical retraction device comprising: a shaft (32) having a proximal end and a distal end; a contact surface (52) adjacent said distal end for manipulating or retracting living tissue within a body cavity; and a means for applying a vacuum at said contact surface.



The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

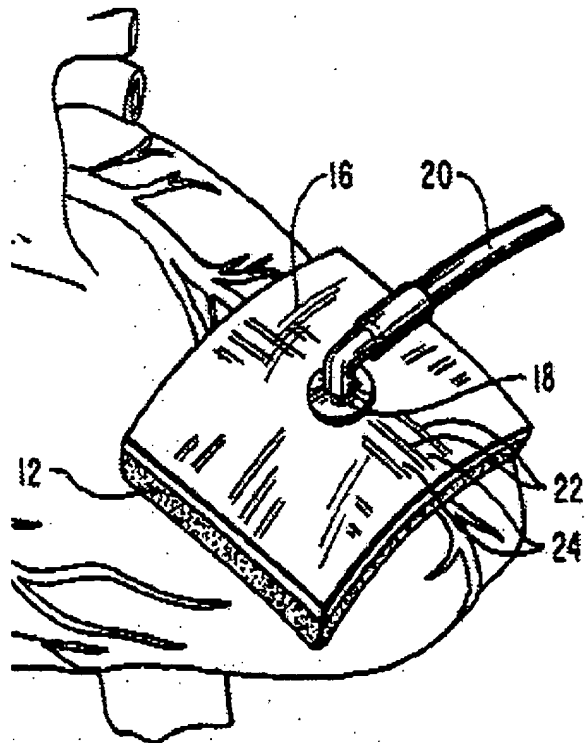
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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 106-108, 121-125, 128, 129, 182, 183 are rejected under 35 U.S.C. 102(e) as being anticipated by Todd et al (5437651).

Todd et al discloses a surgical retraction device comprising: a shaft (20) having a proximal end and a distal end; a contact surface (16) adjacent said distal end for manipulating or retracting living tissue within a body cavity; and a means for applying a vacuum at said contact surface.



Claim 108, see friction increasing surface 12 or elements 22.

Claim 121, see curved surface of the contact surface near the distal end of the shaft 20 as illustrated in the figure above.

Claims 122-125, see element 12.

Claim 128, see lumen 20.

Claim 129, see tubing 20.

Claims 182 and 183, see porous pad 12 which provides a plurality of holes along the contact surface as broadly claimed. The claim, as worded, does not require the holes be formed in the contact surface. Note the porous pad communicates with the passage 18 formed in the contact surface.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

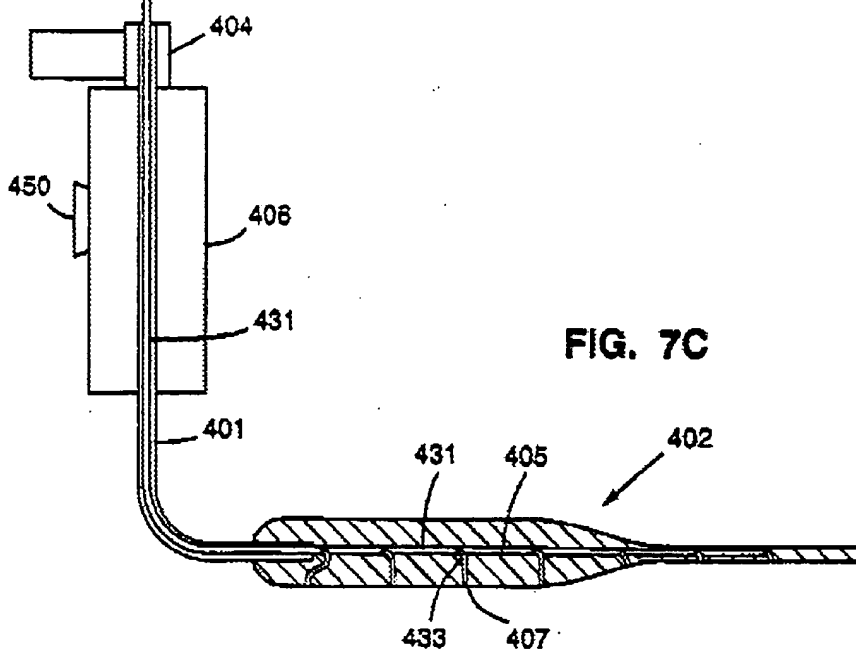
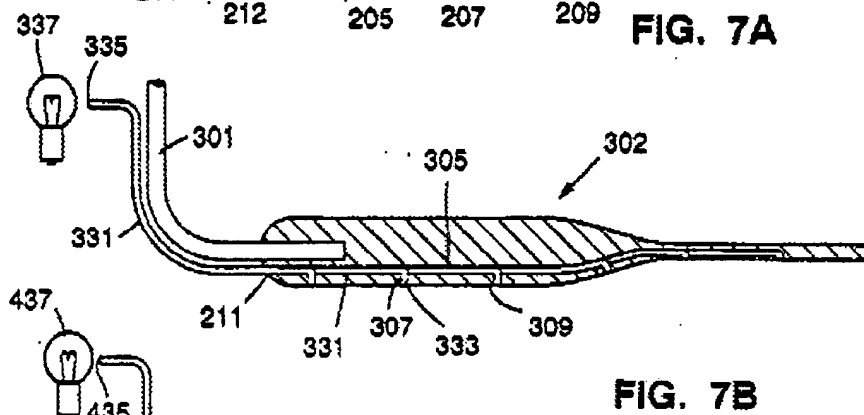
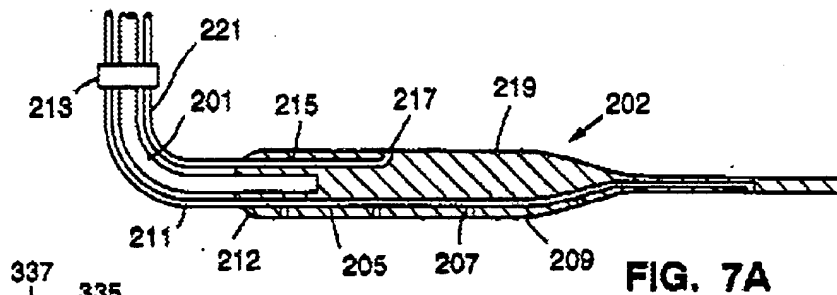
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 106, 107, 182, 183 are rejected under 35 U.S.C. 102(e) as being anticipated by Kramer et al (5505689).

Kramer et al discloses a surgical retraction device comprising: a shaft (201,301,401) having a proximal end and a distal end; a contact surface (202,302,402) adjacent said distal end

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for manipulating or retracting living tissue within a body cavity; and a means for applying a vacuum at said contact surface.



Claims 182 and 183, see apertures formed in the body of elements 202,302 and 402 each body providing a plurality of holes along the contact.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 108, 121-129 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kramer et al (5505689) as applied to claim 106 above, and further in view of Todd, et al (5437651).

Todd et al teaches the use of a porous pad to aid in absorbing fluid from the tissues. To increase absorbance of the fluid adjacent the tissue with the retractor of Kramer, et al with the use of a foam pad as taught by Todd, et al would have been obvious to one with ordinary skill in the art at the time of the invention thereof.

In one embodiment of the present invention which is illustrated in FIG. 1, the absorbing means is a polyurethane open celled foam pad 12. The preferred foam pad has a 100  $\mu$  pore size. All sizes capable of absorbing fluid, however, are within the scope of the present invention. Foam pad 12 is attachable to a suction source 14 for providing suction such that the fluid absorbed into foam pad 12 is drawn away. Suction source 14 may be any mechanism which can provide an appropriate suction vacuum. A receptacle may be attached to the apparatus to collect the fluid as it is drawn from the body.

Claim 121, see curved portion of the shaft proximal to the contact surface near the distal end as illustrated in the figures above.

Claims 122-125, see element 12.

Claim 126, see column 16, lines 63+, the incision is between 10-25mm and therefor the diameter of the shaft must be less than 10 mm.

Claim 127, the modification of Kramer et al with the pad of Todd et al would meet the limitation of "porous material covers the distal end of the shaft" as claimed.

Claim 128, see lumen 202,302,402.

Claim 129, see tubing 202,302,402.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any




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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J. ISABELLA whose telephone number is 703-308-3060. The examiner can normally be reached on MONDAY-THURSDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CORRINE MCDERMOTT can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DAVID J. ISABELLA  
Primary Examiner  
Art Unit 3738

DJI  
June 9, 2005